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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/762,738 | 01/22/2004 | Francis S. Smidler | 739/40601/401 | 5616 |

279 7590 02/10/2005

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105 WEST ADAMS STREET
SUITE 3600
CHICAGO, IL 60603

EXAMINER

GORDON, STEPHEN T

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3612

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|---|---|---|--|
| <p><i>f</i></p> <p>Office Action Summary</p> | <p>Application No.</p> <p>10/762,738</p> | <p>Applicant(s)</p> <p>SMIDLER, FRANCIS S.</p> | |
| | <p>Examiner</p> <p>Stephen Gordon</p> | <p>Art Unit</p> <p>3612</p> | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-10 and 13-20 is/are rejected.
- 7) ☒ Claim(s) 4, 11 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 June 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4-23-04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: label 51 (page 3), surfaces 92,94 (page 8), and end 90 (page 9). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. Claims 5-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claim 5, "said bottom end" lacks clear antecedent basis and could be written as —a bottom end—for clarity.

Re claim 7, "said inner surface" lacks clear antecedent basis and could be written as —an inner surface—for clarity.

Re claim 9, "said connection...portions" in line 3 lacks clear antecedent basis.

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Re claim 10, "said at least one rivet...member" bridging lines 1 and 2 lacks clear antecedent basis.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Abbott et al.

Abbott et al (figure 7 embodiment) teaches a trailer sidewall construction including a bottom rail (same rail shown in figure 9 and numbered as 97 in figure 9) as broadly claimed, a composite panel 11 with inner and outer skins 31 and a core 30, and a base rail 70 attached and configured as broadly claimed.

Re claim 2, the base rail 70 abuts the inner skin – see figure 7.

Re claim 3, see figure 7.

Re claims 17 and 18, rail 70 is formed of strong lightweight aluminum.

Re claim 19, the device includes multiple panels 11 joined by joint configuration 14+ (see figure 3).

5. Claims 1, 3, 15, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Katz '047.

Katz teaches a trailer sidewall construction including a bottom rail 44,46+ as broadly claimed, a composite panel with inner and outer skins 32,28, a core member 30, and a base rail 34 attached and configured as broadly claimed.

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Re claim 3, the base rail 34 abuts an outer surface as broadly claimed.

Re claim 15, Katz teaches that the portion of rail 34 that extends from the floor 48 is of a height of 18-24 inches – see section 1, lines 43-48. Looking at the overall height and relative dimensions of the rail 34 in figure 2, if the described portion of the scuff plate/rail is 18-24 inches high, an overall scuff plate/base rail 34 height of 22 inches would clearly be included in this range.

Re claim 20, the base rail is deemed inset at 40 as broadly claimed.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abbott et al.

Re claims 13 and 14, Abbott et al (figure 7 embodiment) teaches all of the claimed features as discussed above regarding claim 1 and further teaches that the base rail 70 is of a one piece continuous extruded construction. The reference fails to teach that the length of such continuous construction is 52 feet. The specific length of the rail would be driven by the desired length of the trailer. A continuous extrusion of the shape of base rail 70 of 52 feet would not be an uncommon length and would typically be extruded as a single piece to reduce assembly time/costs. Specific recitation of the length of the continuous piece

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then in this case would not define a patentable departure from the teachings of Abbott et al.

8. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Katz '047.

Re claim 16, Katz teaches all of the claimed features as discussed above regarding claim 1 but fails to specifically teach a thickness of the base rail 34 of 0.19 inches. Katz does teach a base rail thickness of about 1/8 inch – see section 2 – lines 27-29.

It is known in the art to fabricate structures from thicker material in order to increase strength. If it were desired to create a stronger base rail 34, it would have been obvious to one of ordinary skill in the art to increase the thickness of the base rail until a desired strength was reached. Specific recitation of the base rail thickness then in this case would not define a patentable departure from the teachings of Katz.

9. Claims 4, 11, and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

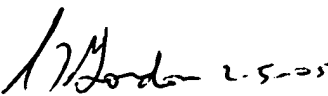
10. Claims 5-10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note at least Yurgevich teaches a trailer sidewall construction of joined composite panels.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (703) 308-2556. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephen Gordon
Primary Examiner
Art Unit 3612

stg